

**LEMON GROVE [CITY COUNCIL]
AGENDA ITEM SUMMARY**

Item No. 3
Mtg. Date June 7, 2016
Dept. Public Works

Item Title: [Senior Center Lease Agreement with Community Health Improvement Partners]

Staff Contact: [Mike James, Public Works Director]

Recommendation:

Adopt a resolution (**Attachment B**) approving a lease agreement (**Attachment B – Exhibit 1**) between the City and Community Health Improvement Partners for use of the Senior Center.]

Item Summary:

[In February 2016, city staff was contacted by Community Health Improvement Partners (CHIP) requesting to lease a portion of the Senior Center located at 8235 Mount Vernon Street. City and CHIP staff negotiated a draft lease agreement **Attachment B – Exhibit 1** for City Council's feedback and consideration.]

Fiscal Impact:

[The lease agreement is projected to generate \$9,000 in gross revenue per fiscal year.]

Environmental Review:

<input checked="" type="checkbox"/> Not subject to review	<input type="checkbox"/> Negative Declaration
<input type="checkbox"/> Categorical Exemption, Section []	<input type="checkbox"/> Mitigated Negative Declaration

Public Information:

<input checked="" type="checkbox"/> None	<input type="checkbox"/> Newsletter article	<input type="checkbox"/> Notice to property owners within 300 ft.
<input type="checkbox"/> Notice published in local newspaper	<input type="checkbox"/> Neighborhood meeting	

Attachments:

- A. Staff Report
- B. Resolution

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 3

Mtg. Date June 7, 2016

Item Title: **[Senior Center Lease Agreement with Community Health Improvement Partners]**

Staff Contact: Mike James, Public Works Director

Discussion:

In February 2016, City staff was approached by Mr. Dana Richardson of Community Health Improvement Partners (CHIP) requesting if there were any city facilities that may be available for lease. Since that initial contact, CHIP and City staff has discussed possible locations as well as the initial terms of a lease agreement. Both entities found the terms of the draft agreement (**Attachment B – Exhibit 1**) acceptable. The remaining portion of this staff report provides background information about CHIP and identifies key components of the agreement for City Council's consideration.

Community Health and Improvement Partners

The mission of CHIP is to advance long-term solutions to prioritize health needs through collaboration and community engagement. CHIP focuses on its mission by collaborating with San Diego health care systems, hospitals, community clinics, insurers, physicians, universities, community based organizations, schools and government entities.

The services that CHIP will provide at the Senior Center include:

- Determining community informed strategies, services, and resources needed to support healthy eating and active living for Lemon Grove residents.
- Providing residents with opportunities to:
 - Purchase healthy foods and beverages,
 - Support small businesses in the provision of healthy foods and beverages to residents,
 - Increase access and use of public spaces to regularly engage in physical activities,
 - Improve the safety of the community to engage in said physical activity,
 - Support the social and emotional development of school age children, and
 - Leverage community resources to support the overall physical, mental, and spiritual well being of residents.
- Offering intergenerational group discussions, civic engagement and learning opportunities, select physical activity and nutritional support services, community and healthcare partnerships and services, minimal financial support to participating residents, support for local civic, education, and healthcare leaders to increase the capacity to serve Lemon Grove residents in their health improvement efforts.

Attachment A

The professional services will consist of approximately two staff members. The participants receiving services includes Lemon Grove residence of all ages, with an emphasis on youth, seniors, and self-identified resident leaders.

Since November 2012, CHIP has been located in Clairemont Mesa, located in central San Diego. Since the first partnership between CHIP and the City began in January 2012, staff members of both entities have worked closely to meet the community's needs. By relocating to the City, CHIP will be better positioned to partner with the community residents in advocating for environmental changes and more effective policies affecting their health and well being. Further, this work will support local, state, and national efforts to reduce incidence of preventable chronic diseases related to obesity.

Lease Terms and Conditions

Staff prepared a draft lease agreement (**Attachment B – Exhibit 1**) for consideration by the City Council. The significant terms of the agreement include:

Length of Lease – the agreement indicates the term of the lease begins on July 1, 2016. The lease will continue month-to-month as mutually agreed to by both parties.

Rent – the agreement specifies a base amount of \$750 per month with a clause for no increase until June 30, 2017. This amount is an equivalent of \$0.97 per square foot of lease space. Beginning July 1, 2017, the City may implement an escalator clause of 2.5 percent or the increase in the Consumer Price Index (whichever is greater).

Agreed Use – the agreement indicates that office space will be used to manage a community engagement program. The office spaces will be used Monday through Friday from 9:00 a.m. to 7:30 p.m. and no more than one weekend per month. The hours of operation are a general range that may or may not be used during the entire time. The number of community meetings and community requests for services will have an impact on the actual hours used. The use of the office space during the time range will not interfere with any other lessee or City use.

Utilities/Maintenance – the agreement states that the City will pay for gas & electricity, water, solid waste, and general maintenance of the building. The CHIP will be responsible for all other utilities such as telephone, television, and internet. Also, each year, the proportion of paying for utilities will be evaluated and renegotiated, if deemed necessary by the City.

Indemnity/Insurance – the indemnity and insurance language included in the lease agreement includes the City's standard requirements.

Termination – the lease agreement allows either party to terminate the lease agreement with a thirty-day written notice.

Capital Improvements – according to the lease agreement, the City will have the responsibility for major maintenance and repairs.

Capital Replacement Plan

Staff estimates there are \$6,000 worth of capital improvements required at the back building of the Senior Center. The improvements include replacing two HVAC wall mounted units and security installation fee and ongoing costs. As such, staff recommends that one year's worth of revenue is allocated to the improvements.

Attachment A

Conclusion:

Staff recommends that the City Council adopt a resolution (**Attachment B**) approving a lease agreement (**Attachment B – Exhibit 1**) between the City and Community Health Improvement Partners for use of the Senior Center

Attachment B

RESOLUTION NO. 2016 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF LEMON GROVE AND COMMUNITY HEALTH IMPROVEMENT PARTNERS FOR USE OF A PORTION OF THE SENIOR CENTER LOCATED AT 8235 MOUNT VERNON STREET, LEMON GROVE, CALIFORNIA

WHEREAS, the City of Lemon Grove owns the building and parking spaces located at 8235 Mount Vernon Street, Lemon Grove, California, which is referred to as the Senior Center; and

WHEREAS, the City negotiated the terms of a lease agreement with Community Health Improvement Partners (CHIP) for the use of a portion of the Senior Center; and

WHEREAS, the City is authorized by State law to lease property at market rate and has the ability to lease the Senior Center; and

WHEREAS, CHIP has a desire to lease a portion of the Senior Center from the City at a market rate; and

WHEREAS, entering into a lease agreement with CHIP for use of the Senior Center is in the best interest of the City.]

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Approves the attached lease agreement (Exhibit 1); and
2. Authorizes the City Manager or designee to execute, renew and manage said lease agreement.]

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Attachment B – Exhibit 1

LEASE AGREEMENT FOR USE OF THE LEMON GROVE SENIOR CENTER

This Agreement is effective this 1st day of July 2016 by and between the City of Lemon Grove, a municipal corporation, hereinafter referred to as "City" and Community Health Improvement Partnership (CHIP), a non-profit corporation, and hereinafter referred to as "Lessee."

RECITALS:

- 1) City owns certain real property commonly described as the Senior Center at 8235 Mt. Vernon Street, Lemon Grove, California, and hereinafter referred to as the "Senior Center."
- 2) The Senior Center is comprised of three buildings, only one of which the Lessee desires to utilize in furtherance of its mission to advance long-term solutions to priority health needs through collaboration and community engagement. The Lessee focuses on its mission by collaborating with San Diego health care systems, hospitals, community clinics, insurers, physicians, universities, community based organizations, schools and government entities. *(See Exhibit A on page 11).*
- 3) The City is willing to provide one office and shared use of a portion of the administration building in the Senior Center to the Lessee per the following term and fee schedule:
 - a) Term: Commencing on July 1, 2016, the term of the Lease shall be month-to-month, as mutually agreed to by both parties. There shall be no holdover tenancy and any extension shall be subject to a written agreement approved by both parties.
 - b) Base Rent: \$750 per month ("Base Rent"), payable on the 1st day of each month commencing on July 1, 2016. Payments not received by the 10th day of each month will incur a 10 percent late fee penalty payable immediately.
 - c) Additional Hours: Depending on the availability outside of the pre-established hours, the Lessee may schedule additional time at office and related facilities at a rate of \$40 per hour.
 - d) Initial Deposit: One month base rent is payable with the 1st monthly payment.
 - e) Annual Rent Increase: The annual base rent may increase no sooner than July 1, 2017 and each July 1st thereafter based on the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Diego Area or 2.5 percent, whichever percent is greater. The City retains the option to defer any annual rent increase each fiscal year.
- 4) City hereby leases to Lessee, and Lessee hereby leases from City, the facilities, for the Term of the rental, and upon all of the terms, covenants and conditions set forth in this Lease.

NOW, therefore, it is hereby agreed as follows:

1. Facilities to be Provided to Lessee by City

1.1 Office and Related Facilities

The general public shall not be wholly or permanently excluded from the premises or portion of the premises covered by this Lease except the office space in the administration building; provided, however, that reasonable restrictions may be made, consistent with the right of the public to the use and enjoyment of the premises and the facilities therein, to enable the Lessee to use

Attachment B – Exhibit 1

the premises for the purposes for which the same are allocated. All such regulations and restrictions shall be subject to written approval by the City Manager.

1.2 Hours of Use

On or before July 1st each year, Lessee shall furnish to the Community Services Superintendent a written schedule of all dates and times the project is to be conducted on the premises by Lessee during the period of this Lease.

Lessee shall have use of the Lounge in the Senior Center during the Agreement period. Lessee shall not have exclusive use of the Shared Use Area, and this facility shall remain open to the public. The times of operations will be Monday through Friday from 9:00 a.m. to 7:30 p.m. and no more than one weekend per month in the Lounge and the male/female restrooms.

Any use of the Senior Center by the Lessee beyond the regularly stated days and hours must be scheduled with the City's Public Works Department. A written request must be submitted to the Community Services Superintendent no less than 30 days in advance of the date to be requested. The Lessee is responsible for set up, tear down and cleanup of any use of the facility after 5:00 p.m.

1.3 Equipment and Storage

Lessee may store office equipment and supplies for its programs and participants in Lounge.

Lessee is solely responsible for securing all supplies, furniture, fixtures, and equipment, including all electronic equipment such as computers, printers, televisions, videocassette recorders, stereos, etc., within the premises. Lessee is solely responsible for securing the premises each day against theft and damage of any property that is within the premises. The City has absolutely no responsibility for the replacement of any property that is damaged or lost due to theft and/or negligence.

1.4 Premises

Lessee shall not assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment or other such foregoing transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or permit the use of the Premises by any persons other than Lessee and its employees.

City shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date and warrants that the existing electrical, plumbing, and lighting, shall be in good operating condition on said date. If a noncompliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, City shall, as City's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such noncompliance, malfunction or failure, rectify same at City's expense. The warranty periods shall be 30 days. If Lessee does not give City the required notice within the appropriate warranty period, correction of any such noncompliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense.

Attachment B – Exhibit 1

Vehicle Parking. Lessee shall be entitled to use the parking spaces designated for the Lemon Grove Senior Center. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pickup trucks, herein called "Permitted Size Vehicles."

- (i) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by City for such activities.
- (ii) Lessee shall not service or store any vehicles in the parking spaces.
- (iii) No overnight parking is permitted.

1.5 Posting of Materials

No materials may be affixed to any wall or bulletin boards or left in any City / Public areas without the consent of the Community Services Superintendent or designee.

2. Services to be Provided by Lessee

Lessee provides an advance long-term solution to priority health needs through collaboration and community engagement. CHIP focuses on its mission by collaborating with San Diego health care systems, hospitals, community clinics, insurers, physicians, universities, community based organizations, schools and government entities. The services that the CHIP will provide at the Senior Center include:

- 2.1 Determining community informed strategies, services, and resources needed to support healthy eating and active living for Lemon Grove residents.
- 2.2 Providing residents with opportunities to:
 - (i) Purchase healthy foods and beverages,
 - (ii) Support small businesses in the provision of healthy foods and beverages to residents,
 - (iii) Increase access and use of public spaces to regularly engage in physical activities,
 - (iv) Improve the safety of the community to engage in said physical activity,
 - (v) Support the social and emotional development of school age children, and
 - (vi) Leverage community resources support the overall physical, mental, and spiritual well being of residents.
- 2.3 Offering intergenerational group discussions, civic engagement and learning opportunities, select physical activity and nutritional support services, community and healthcare partnerships and services, minimal financial support to participating residents, support for local civic, education, and healthcare leaders to increase the capacity to serve Lemon Grove residents in their health improvement efforts.

Attachment B – Exhibit 1

2.4 The professional services will consist of approximately two staff members. The participants receiving services includes Lemon Grove residence of all ages, with an emphasis on youth, seniors, and self-identified resident leaders.

3. Lessee Payments

Monthly lease payments shall be received by the City on the 1st day of each month to:

City of Lemon Grove
Attn: David Huey, Community Services Superintendent
3232 Main Street
Lemon Grove, California 91945
(619) 825-3816 or (619) 825-3810

Any payments not received within 15 days of the due date shall incur a 10 percent late fee penalty due immediately.

4. Rules for Lessee Employees and Volunteers

Lessee shall obtain Worker's Compensation Insurance in accordance with State law for all employees and volunteers and shall provide City with a certificate of insurance as specified in Section 16 hereof. Lessee shall provide a certificate of insurance in the form and as required by Section 16 hereof.

5. Maintenance and Janitorial Services

The City will perform maintenance on all buildings and appurtenances. The City will perform custodial services; provide custodial supplies and paper products for the Senior Center.

The Lessee will conduct its operation in the Lounge with its use limited to the Lessee in the areas as defined in Section 1 of this agreement and shown on page 11 and 12 of this agreement.

Lessee shall store away all equipment at the conclusion of each program day in the Lounge. If there is a time when the Lessee uses the facility after its normal operating period, the Lessee shall be responsible for all clean up and set up for that portion of the facility by 8:00 a.m. the following morning.

Should Lessee fail to clean up the facility to the satisfaction of the City, the City shall notify Lessee in writing identifying specific deficiencies. Should there be additional occurrences, the City may, at its sole discretion, assess the Lessee \$50 per occurrence. This same procedure shall be used if the Lessee fails to clean up any uncharacteristically large or difficult disorder, clutter or mess in its operating area.

6. Utilities

The City agrees to provide the following utilities at its cost - San Diego Gas & Electric, Helix Water District, and EDCO solid waste costs.

- a) Lessee shall pay for all other utility and premises costs associated with the use of the Premises not identified in section 6.
- b) Each July 1st, costs for utilities and maintenance will be evaluated by the City to determine if a future cost sharing agreement warrants inclusion.

7. Improvements to Facility

Attachment B – Exhibit 1

Lessee may, at its own expense, if consistent with the purpose of this Agreement in the opinion of the Community Services Superintendent, make any alterations or changes in the premises or cause to be made, built or installed thereupon, any improvements necessary or desirable for Lessee's use and may alter and repair any such improvements. Any application for an improvement to the premises must be made in writing by Lessee and submitted to the City's Community Services Superintendent for review and consideration of approval. Prior to any improvement being made by the lessee, written approval must be received from the Community Services Superintendent. Lessee agrees to take good care of the premises, fixtures and appurtenances and of all alterations, additions and improvements to any of them.

8. Retention of Improvements

All structures, fixtures and improvements whether heretofore or hereinafter installed or erected by Lessee, shall upon the expiration of this Agreement or any extension thereof, become the property of the City and shall not be removed from the above-described premises. At the sole discretion of the City, lessee may be required to remove any and all improvements.

9. Right of Inspection

The City shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises or to inspect the operations conducted on said premises. In the event that such entry or inspection by the City discloses that said premises or the operations conducted thereon are not in a safe, sanitary and satisfactory condition, the City may after one written warning, which was not complied with, terminate this Lease on one day's written notice.

10. Discrimination

Lessee shall not, for any reason, discriminate against any person because of race, sex, age, creed, color, disability or national origin.

12. Smoking

Smoking is prohibited inside any public building, and within 20 feet of a main exit, entrance, or operable window of a public building.

13. Assignment

Lessee shall not assign this Agreement, or any interest therein, or any part thereof; or any right or privilege appurtenant thereto or suffer any other person (the agents, officers and employees of City excepted) to occupy or use the said premises, without the prior written consent of the City Council of the City of Lemon Grove. Consent to one assignment, occupation or use by any other person shall not be deemed to be consent to any subsequent assignment, occupation or use by another person. Any such assignment without such consent shall be void and shall, at the option of City, terminate this Agreement. This Agreement shall not, nor shall any interest therein, be assignable, by operation of law, and if such an assignment is made, the City may terminate this Agreement, at its option.

14. Compliance with Law

Lessee shall, at its sole cost and expense, comply and secure compliance with all the laws, ordinances and requirements of all municipal, county, state and federal authorities now in force, or which may herein after be in force, pertaining to the said premises, or the operations conducted thereon, and shall faithfully observe, and secure observance

Attachment B – Exhibit 1

with, in the use of the premises, all municipal and county ordinances and state and federal statutes now in force or which may hereinafter be in force, and shall pay before delinquency all taxes, assessments, and fees assessed or levied upon Lessee or the premises by reason of any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Lessee or by any reason of the business or other activities of Lessee upon or in connection with the said premises. Lessee shall comply with all rules or regulations of the City applicable to the Senior Center. The judgment of any court of competent jurisdiction, or the admission of Lessee or any assignee in any action or proceeding against them, or any of them, whether the City be a party thereto, or not, that Lessee or assignee has violated any such regulations, ordinance, or statute in the use of the Office shall be conclusive of that fact as between City and Lessee.

15. Hold Harmless

City, its agents, officers and employees, shall not be, nor be held liable, for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Lessee or any of Lessee's representatives, agents, employees, guests, licenses, invites, patrons or clientele or of any other persons whatsoever, nor for personal injuries to, or deaths of them, or any of them, whether caused by or resulting from any acts or omission of Lessee in or about the premises, or any act or omission of any person or from any defect in any part of the premises or from any other cause or reason whatsoever.

Lessee agrees to protect, defend, indemnify and hold harmless City, its officers, agents and employees from any and all liability, claims, suits, liens and judgments, of whatever nature, including injury to any person, arising from performance or failure to perform obligations of this Agreement caused or claimed to be caused by Lessee, its agents or employees during the times and at the places that Lessee is using City's facilities. Lessee agrees it is its duty to defend even if the claim appears without merit.

City agrees to protect, defend, indemnify and hold harmless Lessee, its officers, agents and employees from any and all liability, claims, suits, liens and judgments, of whatever nature, including injury to any person, arising from performance or failure to perform obligations of this Agreement caused or claimed to be caused by City, its agents or employees during the times and at the places that City is using its facilities. City agrees it is its duty to defend even if the claim appears without merit.

16. Liability Insurance

Lessee agrees to secure and maintain commercial general liability and commercial automobile liability insurance with an insurance carrier satisfactory to City to protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of Lessee or any person, including volunteers for Lessee or under Lessee's control or direction and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts for activities under Lessee's control or direction. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Agreement in the amount of not less than \$1,000,000 for combined single limit or single occurrence and not less than \$2,000,000 per annual aggregate if an aggregate is applicable. Proof of such insurance shall be filed with City by Lessee prior to conducting any activities under this lease, and shall be in a form satisfactory to the City Attorney.

Attachment B – Exhibit 1

17. Certificate of Insurance

The commercial general liability and commercial automobile liability policies required herein shall name the City as an additional insured as well as include the applicable endorsement. A certificate of insurance shall be provided for each policy required herein and have a Non-cancellation without thirty (30)-day notice to City clause and shall provide that copies of all cancellation notices shall be sent to the City Clerk. All insurance policies shall be filed with the City Clerk. Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible.

18. Termination after Notice for Failure to Comply with Agreement

Should City determine that Lessee appears to be in violation of the Agreement (except for violations specified in Section 21 herein) it shall give Lessee thirty (30) day notice of intent to terminate at the address specified in Section 23 hereof and identify the perceived violations. If said violations are not corrected within that time, this Agreement shall be then forthwith terminated.

19. Termination in the Interest of the Public Health, Safety and Welfare

The City may terminate this Agreement without notice and cause the Office to be immediately vacated in the following instances.

- a. The City finds that the operation of Lessee at the Office poses a threat to the public health, safety or welfare.
- b. The Lessee fails to keep the insurance required by this contract in full force and effect.
- c. The Lessee is placed in receivership or bankruptcy or is determined to be insolvent.

Notwithstanding any of the above, Lessee shall be given a reasonable opportunity to cure a violation of Subsections (a) and (b), above, by City. Lessee shall have thirty (30) days to cure any violation of (a) or (b) before termination of this Agreement. During this time period, Lessee shall not be allowed to occupy the Office while the operation is a threat to public health, safety or welfare or while required insurance coverage is not in place.

20. Termination by Either Party

Either party may terminate this lease upon thirty (30) days written notice to the other party pursuant to Section 23.

- a. After a termination request has been accepted, a site walk will be performed by both Parties to determine if the facility is in the same condition as it was in the initial occupation.
- b. Any costs to repair or replace the facility will be paid for with the initial deposit funds.
- c. Should there not be any repair or replacement costs, the full deposit will be returned to the Lessee within thirty (30) days of the final date of occupation.

21. Care of Premises

Lessee shall give prompt notice to the City of any damage to the premises. Lessee shall

Attachment B – Exhibit 1

not commit, or suffer to be committed, any injury, or any public or private nuisance on the premises and shall keep the premises clean and clear of refuse and obstructions and shall dispose of all garbage, trash and rubbish in a manner satisfactory to the Community Services Superintendent.

22. Assigns

Time is of the essence of each and all of the terms and provisions of this Lease and this Lease shall inure to the benefit of and be binding upon the parties herein and any successors of Lessee as fully and to the stipulations and Agreements in this Lease shall extend to, and bind any assignees of this Lease.

23. Notices

Any notice or notices provided for by this Lease or by law to be given or served upon Lessee may be given or served by depositing in the United States mail, postage prepaid, a letter addressed to said Lessee at the premises address stated at the commencement hereof and to Dana Richardson, Vice President, Community Health Improvement Partners, 5095 Murphy Canyon Road, Ste. 105, San Diego, CA 92123; or may be personally served upon said Lessee (or any one of them), or any person hereafter authorized by Lessee to receive such notice, or by posting the notice in a conspicuous place on the premises; and any notice or notices provided for by this Lease to be served upon City may be given or served by letter addressed to: the Community Services Superintendent, City of Lemon Grove, 3232 Main Street, Lemon Grove, CA 91945. Any notice or notices given or served as provided herein shall be effective and binding for all purposes upon the principals of the parties.

24. Remedies of City

In the event (a) that Lessee files a voluntary petition in bankruptcy, or (b) that Lessee shall be adjudicated as bankrupt, or (c) that Lessee make a general assignment for the benefit of creditors, then in either or any of said events, City may at its option, without further notice or demand upon Lessee, immediately cancel and terminate this Lease; this remedy is cumulative to other rights of the City provided by law or by this Lease, and shall not be deemed to limit said other rights in any manner.

25. Waiver

The waiver by the City of any breach of any term, condition or covenant herein contained shall not be deemed to be a waiver of any simultaneous breach of any other term, covenant or condition herein contained. Any failure on the part of the City to require or exact full and complete compliance with any of the covenants, conditions or terms of this Lease shall not be construed, as in any manner changing or waiving the terms hereof or to stop the City from enforcing in full the provisions hereof; nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written Agreement of the City and the Lessee.

26. Vacation of Premises

At the termination of this Lease for any reason Lessee will peaceably vacate and yield to the City any building structure that Lessee may occupy or use, pursuant to this Lease, which belongs to the City.

27. Cost and Attorney's Fees

If any Party brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter

Attachment B – Exhibit 1

defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, City shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

28. Dispute Resolution.

- a. Mediation: City, Lessee, and Broker(s) agree to mediate any dispute or claim arising between them out of this agreement or any resulting transaction, before resorting to arbitration or court action. Paragraphs (2) and (3) below apply whether or not the arbitration provision is initiated. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover any attorney fees, even if they would otherwise be available to that party in any such action. This mediation provision applies whether or not the arbitration provision is initiated.
- b. Arbitration Disputes:
 - i. Lessee and City agree that any dispute or claim in Law or equity arising between them out of this agreement or any resulting transaction, which is not settled through meditation, shall be decided by neutral, binding arbitration, including and subject to paragraphs (2) and (3) below. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of real estate transactional law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration conducted in accordance with Part III; Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure 1283.05.
 - ii. EXCLUSIONS FROM MEDIATION AND ARBITRATION: The following matters are excluded from mediation and arbitration: (i) a judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code 2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death or any right of action to which Code of Civil Procedure 337.1 or 337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of

Attachment B – Exhibit 1

attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of the mediation and arbitration provisions.

- iii. Brokers: City and Lessee agree to mediate and arbitrate disputes or claims involving either or both brokers, provided either or both brokers have agreed to such mediation or arbitration prior to, or within a reasonable time after, the dispute or claim is presented to brokers. Any election by either or both brokers to participate in mediation or arbitration shall not result in brokers being deemed parties to the agreement.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.

Initials: City: _____ Lessee: _____

City of Lemon Grove
a municipal corporation

Community Health Improvement Partners
a non-profit corporation

Lydia Romero, City Manager

Dana Richardson, Director

Date

Date

Attachment B – Exhibit 1

Senior Center, Lounge
8235 Mount Vernon Street
Lemon Grove, CA 91945

EXHIBIT A



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Attachment B – Exhibit 1

